

REMARKS:

Claims 1-13 and 50-60 are presented for examination. Claims 1, 6, 11, 12, 13, 50, 54, 58, 59 and 60 are independent claims.

The present review is requested because it is believed, *inter alia*, that the outstanding rejection of claims 1-13 and 50-60 under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent Application No. 2003/0074293 to Kiron et al. (hereinafter “Kiron et al.”) in view of U.S. Patent No. 7,103,569 to Groveman et al. (hereinafter “Groveman et al.”) is improper.

While a detailed analysis directed to the claims of the present application and the cited references is currently of record (see, e.g., pages 17-19 of Applicant’s paper filed February 16, 2007, entitled “AMENDMENT IN RESPONSE TO NOVEMBER 16, 2006 OFFICE ACTION”), a concise summary is presented below.

Initially, it is noted that (as described in the specification) the present invention enables concentrated-position equity holders to pool their assets for participation in a derivative financial product (thus addressing certain conventional product shortcomings such as, for example, needing to be individually tailored for each individual customer).

Regarding the pending claims, the feature that will be focused on for the purposes of this discussion relates to collecting demand for the derivative financial product from a plurality of potential customers and allocating the collected demand amongst the potential customers.

It is respectfully submitted that neither the Kiron et al. nor the Groveman et al. references teach, show, or suggest (either alone or in combination) the claimed collection and allocation of demand.

Referring first to Kiron et al., it is noted that the Examiner himself acknowledges (at page 4 of the April 30, 2007 Final Office Action) that this reference “does not explicitly teach collecting demand for collared option hedge product amongst at least some of the plurality of potential customers”.

As an aside, although the Examiner does assert that Kiron et al. discloses “allocating the collected demand for collared option hedge product amongst a plurality of customers”, it is respectfully submitted, as a simple matter of logic, that if Kiron et al. does not disclose collecting the demand (as acknowledged by the Examiner) then the reference can not disclose allocating such collected demand.

Similarly, although the Examiner asserts that Kiron et al. discloses “storing the allocated demand on computer”, it is respectfully submitted, as a simple matter of logic, that if Kiron et al. does not disclose collecting the demand (as acknowledged by the Examiner) and if Kiron et al. does not disclose allocating the collected demand (as discussed immediately above) then the reference can not disclose storing such allocated demand.

Moreover, it is respectfully submitted that a studied review of paragraphs 0021-0037 and 0046 of Kiron et al. (cited by the Examiner at page 4 of the April 30, 2007 Final Office Action as allegedly disclosing allocating the collected demand amongst a plurality of customers) reveals that allocation of collected demand amongst customers is not discussed in these paragraphs. Rather, what appears to be discussed here is simply the structure of the new 'closed end fund of funds' and the buying and selling of shares – with no discussion directed specifically to the allocation of collected demand amongst customers (for convenience, the cited paragraphs are reproduced below):

[0021] The present invention's open end fund securitization process will allow for the first time: (a) intra-day trading of an unlimited number of mutual fund indexes comprised of open end funds; (b) intra-day trading of an unlimited number of open end mutual funds with a greater degree of liquidity; and (c) intra-day trading of derivative securities linked to open end funds and indexes of open end funds.

[0022] This process is made possible by the creation of a second type of security, which will invest substantially all of its assets in the targeted open end mutual fund shares. The preferred embodiment for this new security is a "closed end fund of funds", which has a fixed number of shares outstanding, and a constant portfolio which is invested exclusively in the shares of the targeted open end fund(s). The result is a new security which will synthetically replicate the performance of those shares purchased, and do so with a high degree of correlation and consistency. This new security can then be listed on a National Securities Exchange and traded without restriction. After trading begins, linked derivative securities can then be listed and traded.

[0023] Other objects and advantages of the present invention include:

[0024] A) Any open end fund, when securitized, can be listed on a stock exchange and traded at any second, minute or hour, regardless of the open end fund N.A.V.

[0025] B) Investors can determine what price will be paid before an order is placed.

[0026] C) A National Securities Exchange (N.S.E.) will be able to list derivatives on the securitized open end funds, because of the greater price transparency generated through the trading of the securitized open end funds. The invention will act as a hedge for market makers who wish to lay off their risk of making markets in options on the underlying security.

[0027] D) Investors will be able to leverage their investments.

[0028] E) Investors will be able to place GTC, open, stop loss, market, limit orders when buying or selling their funds.

[0029] F) Investors can buy or sell the securitized funds as often as they wish with no

penalty.

[0030] G) Investors will be able to purchase or sell their shares immediately by making a phone call to their broker, or by electronic trading.

[0031] H) Investors will not be charged arbitrary fees for frequent purchases or selling of the securitized open end funds.

[0032] I) Investors will not be charged additional fees for owning small quantities of shares.

[0033] J) The securitized funds have fixed number of shares which provides stability of asset levels.

[0034] K) Investors will be able to sell shares short quicker, and with greater liquidity.

[0035] L) Open end fund management will benefit from reduced volatility in their cash levels and in their frequently traded customer account assets, resulting in lower fund expense ratios.

[0036] M) Investors purchasing a securitized fund will pay a reduced sales load in many cases than they would otherwise have to pay because of the bulk purchasing power the securitized fund will have when investing in specific open end funds.

[0037] Further objects and advantages include the ability to trade a futures contract on both a securitized fund share and an index of securitized fund shares with linked derivative securities. In addition, the present invention solves a long existing but unsolved and unrecognized need. Many investors, both professional and non-professional own multiple mutual funds in an effort to diversify their investment portfolio's. An index of open end mutual funds would allow greater diversification, lower transaction costs, expanded investment choices and the ability to measure their fund performance against a relevant benchmark index. The index could be calculated many different ways with a great deal of flexibility: equal price weighted, capitalization weighted, or geometrically weighted, depending upon the need. Still further objects and advantages will become apparent from a consideration of the ensuing description and drawings.

[0046] The box designated 16 represents a computer program algorithm which separates the group of funds stored in a database created by the step set forth in box 14. This new group of funds is stored in a new memory location defined by its specific investment criteria. This criteria may include a subgroup including the fund investment objective or the sector weightings of its portfolio. Currently, the major fund investment objective subgroups include Aggressive Growth, Growth and Income, Growth, Income, Bond, Sector, Asset Allocation, Specialty, Equity Income, Europe Stock, Foreign Stock, Government Bond, Hybrid Income, Small Company, World Stock and World Bond.

Referring now to Groveman et al., it is noted that this reference, like Kiron et al., fails to teach,

show, or suggest collecting demand for a collared option hedge product from a plurality of potential customers.

In this regard, it is respectfully submitted that the disclosure of Groveman et al. at col. 3, lines 31-67 (cited by the Examiner at page 4 of the April 30, 2007 Final Office Action as allegedly disclosing collecting demand for a collared option hedge product from a plurality of potential customers) does not, in fact, disclose such collection of demand from customers (and thus, fails to cure the deficiency of Kiron et al. discussed above).

The Examiner's position is apparently that when Groveman et al. does the step of "determining the best candidates against which puts or calls can be sold," this somehow discloses collection of demand from customers. This is simply not so. What the full sentence directed to determining best candidates states is: "Each of the equities in the tracking basket (or included in the index) is analyzed at step 120 to determine the best candidates against which puts or calls can be sold."

Thus, taking the entire "determining" sentence that the Examiner refers to in context, it is seen that in operating a tracking basket equities are analyzed to determine the best candidates against which puts or calls can be sold. Thus, the candidates referred to relate to the equities (not customers). The analysis and determination of Groveman et al. simply has nothing whatsoever to do with collection of demand from customers.

In view of the above, it is respectfully requested that the Panel issue a decision that the application is allowed on the existing claims.

Respectfully submitted,
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